

# AMS CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 14-74

Date Received: Sep 17, 2014

Title: Updates to Real Estate Guidance- RECO

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Initiator Name: Caitlin Phillips

Initiator Organization Name / Routing Code: ALO-200

Initiator Phone: 828-291-1470

ASAG Member Name: Irene Langweil

ASAG Member Phone: 202.267-3888

Guidance and Policy must be submitted with separate CR coversheets

Policy

Or

Procurement Guidance

Real Estate Guidance

Other Guidance

## Summary of Change:

Updates to the Real Estate Guidance are required as a result of updated information from customers, Real Estate Contracting Officers, and Legal Counsel.

## Reason for Change:

ALO-200 is revising the Real Estate guidance to address concerns expressed by the Legal Counsel and Real Estate Contracting Officers over the past fiscal year.

## Development, Review, and Concurrence:

ALO-200, ALO-300, AGC-520, WLSA, ELSA & CLSA

## Target Audience:

Real Estate Contracting Officers

Briefing Planned: No.

ASAG Responsibilities: None.

## Section / Text Location:

Please replace the following guidance in AMS with the attached documents.

1.1.3.1 - Environmental / Sustainability / Energy

1.1.17 - Outgrant

1.2 - Land Clause Matrix

2.4.8 - Appendix H: Seismic

FAST Version 07/2014

CR 14-49

p. 1

**The redline version must be a comparison with the current published FAST version.**

X I confirm I used the latest published version to create this change / redline

**Or**

\_\_\_ This is new content

**Links:**

<http://fast.faa.gov/RealEstateGuidance.cfm>

**Attachments:**

Redline and Final documents.

**Other Files:**

None.

**Redlines**

**Section Revised: 1.1.3.1 Environmental / Sustainability / Energy**

**1.1.3.1 Environmental / Sustainability / Energy** Revised 10/2042

During the land acquisition process, Real Estate Contracting Officers (RECOs) are required to follow the requirements as set forth below in the following laws, executive orders, regulations, policies and orders:

1. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
2. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
4. National Environmental Policy Act (NEPA)
5. FAA EDDA Order 1050.19B: “Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions” and any revisions thereto or subsequently published Orders pertaining to environmental compliance
6. Resource Conservation and Recovery Act (RCRA)
7. Executive Order 11988, Floodplain Management
8. Executive Order 11990, Protection of Wetlands

**A. Environmental Due Diligence Audits (EDDA) Requirements**

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. After the EDDA process, the determination of whether to waive the performance of an EDDA must be completed prior to the execution of contracts for the acquisition or disposal of real property per 1050.19B.

Off-airport land acquisitions of new sites, or that result in the expansion of an existing site, require an EDDA per 1050.19B. All on-airport leases or no-cost on-airport acquisitions that utilize the Memorandum of Agreement

(MOA) template will use the Hazardous Substance Contamination clause, preferably the version included in the template, unless an EDDA is required pursuant to FAA Order 1050.19B. In accordance with FAA Order 1050.19B, any revisions to the Hazardous Substance Contamination clause must be reviewed by and concurred by the appropriate Regional Counsel's office or the Office of the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-500). Any revisions to the Hazardous Substance Contamination clause will not be approved if such revisions result in a provision that increases FAA's potential environmental liability beyond that which can be proven to have resulted directly from FAA's use of the site and/or operation of equipment on site.

#### Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is executing a new or succeeding lease or exercising an option to renew the land lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B-, the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. See additional information below:

- No additional EDDA documentation is required when exercising an existing renewal option where the terms of the option were negotiated during the original leasing action.
- For new acquisitions (new locations or increasing the size of the existing location) or for disposals/terminations (in whole or in part), the RECO is not to finalize the real estate transaction until the appropriate documentation (EDDA report, memorandum and/or waiver) is approved by the line of business (LOB).
- For succeeding leases in the same location where there are no changes in the area under lease (either increasing or decreasing in size), if the appropriate documentation (EDDA report, memorandum and/or waiver), ~~if the memorandum is not provided either by the LOB or upon request by the RECO, the RECO can proceed with the succeeding lease award but must document the lease file showing evidence of the attempt to secure the documentation from the LOB. , If the memorandum is not provided, the RECO can cite in the Negotiator Report that the EDDA memorandum required for the lease renewal transaction was not received from the LOB-requester per FAA order 1050.19B 1-9b(3).~~

Q 2: Are we required to use the "hazardous substance clause" in its entirety for an airport lease or MOA?

A 2: If the requirements imposed upon the Airport Sponsor by FAA conflict with that Sponsor's requirements under state law, and provided that any revisions to, or deletions from the clause which received the concurrence of the appropriate FAA Regional or Center Counsel or the Office of the Chief Counsel for Acquisition and Commercial Law (AGC-500), then the RECO has the authority to revise the Hazardous Substance Contamination clause found in the "Land On Airport Lease Template" (clause #21) and the "MOA". However, under no circumstances may the clause be revised to increase FAA's potential liability beyond that incurred as a direct result of FAA's actions installing, operating, and/or maintaining of the facility or equipment that FAA has placed on the demised premises. An example of an acceptable revision to the Hazardous Substance Contamination clause is set forth below:

HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00): The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased

premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises. ~~The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises not directly attributable to the installation, operation and/or maintenance of the (type of facility) facility.~~

## B. National Environmental Policy Act (NEPA) Requirements

In accordance with the requirements of FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts, before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) to the extent applicable to such acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist.

The three levels of environmental review include:

- Categorical Exclusion (CATEX),
- Environmental Assessment (EA), or
- Environmental Impacts Statement (EIS).

In the absence of Extraordinary Circumstances (e.g., the presence of wetlands), most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance.

If there are extraordinary circumstances directly applicable to the site acquisition, and consequently, the action cannot be categorically excluded from further environmental review then the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI).

If any impact to the site attributable to FAA's acquisition or the proposed use of the site, is found to be significant and cannot be mitigated then an EIS must be initiated by program office. The EIS process ends in a Record of Decision.

The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met, which would include all required EDDA documentation, prior to proceeding with the land acquisition including all required EDDA documentation. The written notification and additional documentation must be placed in the real estate lease file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the CATEX, EA, FONSI, EIS or Record of Decision.

### **Section Revised: 1.1.17 Outgrant**

### 1.1.17 Outgrant Revised 1/201310/2014

Outgrants, formerly known as outleases, are used when there is a secondary need for unutilized or underutilized FAA leased/owned land or space by either another government entity or third party and such use does not interfere with current or known future FAA needs for the property. ~~Outgrants were formerly known as outleases.~~

Maximum Term: Starting October 1, 2014, outgrants, new or succeeding, are not to exceed a 5-year term. If the FAA does not own the underlying land or building/structure but is leasing it from someone else, the term of the outgrant cannot exceed the term of the underlying FAA contract or 5 years, whichever is less. Unexercised options are not to be included when calculating the remaining term of the underlying contract. For instance, if FAA is leasing land for a Very High Frequency Omni-directional Range (VOR) and the underlying lease has 3 years remaining on the original term and one unexercised 5 year option, the maximum term for any outgrant shall not exceed three years. -

Cancellation Rights: Starting October 1, 2014, outgrants, new or succeeding, must contain the right by the FAA to cancel at will -- at any time and for any reason--. Cancellation rights by the grantee are allowed but should require sufficient notice to the FAA to inspect the property and to determine if any restoration is required.

Outgrant ~~Application~~ (Application (Form 1.3.18 for land or 2.6.31 for space)): Requesting parties will be required by the RECO to fill out an Application for Outgrant Form found in the Real Estate Template Library for all outgrant requests, including new uses, modification to existing uses, or to request a succeeding

outgrant. The RECO will review the request against current real estate records to determine the status of the property, including whether FAA holds sufficient legal interest in the property, and real estate restrictions, if any, on FAA's ability to grant the use. The RECO will forward the Application for Outgrant, along with pertinent information identified during the real estate review, to the head of the line of business (LOB) or LOB designee responsible for the property.

LOB Concurrence: The LOB shall conduct a thorough review and analysis to ensure the secondary use will not interfere with FAA's primary use of the property and that the benefits from the secondary use outweigh the cost and potential for increased liability. Prior to issuing a new outgrant, revising an existing outgrant, or issuing a succeeding outgrant, the RECO must obtain, in writing, concurrence from the LOB, along with any stipulations imposed by the LOB as a condition of issuing the outgrant.

LOB Non-Concurrence: If the LOB does not concur with the outgrant request, the LOB will provide the reason for non-concurrence to the RECO in writing. The RECO will send a letter to the requestor denying the request.

Retention Period and Document Location for Denied Applications: Letters of denial for new requests and the initial application form shall be kept in a central file location within the Real Estate office for a minimum of 1 year after denial. After 1 year, the documentation can be destroyed. All letters of denial to modify existing outgrants or to enter into succeeding outgrants shall be filed in the official outgrant project file.

Permit and License (Outgrant) Forms: The RECO must use the appropriate Outgrant Permit Form or the Outgrant License Form. The Permit form is used solely for Federal government entities. The License form is used for all other entities, including State or Local governments and third

parties. The Office of the Chief Counsel or the appropriate Regional Counsel must approve any modifications to the standard template, ~~must be approved by the Office of the Chief Counsel or the appropriate Regional Counsel.~~

## Questions and Answers:

Q1. Outgrant vs. Reimbursable: How is cost captured in an outgrant (either license or permit) and is it different from a reimbursable agreement?

A1. An outgrant license or permit is not considered a reimbursable agreement because it does not result in the direct provision of a supply or a service by the FAA. Rather, an outgrant gives the grantee permission to utilize an FAA real property asset. Utility, janitorial, or other services that may be provided ~~as a result because~~ of the outgrant, ~~are incidental to, and required for,~~ the use of the subject real property ~~asset by the grantee~~. The RECO must use the award designation letter J under the PRISM system for an outgrant award number. ~~The cost under the outgrant are expenses engendered as a result of the occupancy or use of the real property such as rent or utilities.~~

A signed original outgrant document is sent to the Accounts Receivable department in accounting. With respect to amounts paid as consideration for the outgrant, the FAA may retain all outgrant proceeds in the account established pursuant to 49 USC 45303(c). Please check with ALO-200 for the account number. ~~Consequently,~~ ~~T~~he RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant, which should represent a fair market value for use of the property and the cost of any additional services and overhead costs provided by the FAA.

Q2. Cost Structure: How can the cost be structured in an outgrant?

A2. The RECO will structure the cost of the ~~outgrants~~ inoutgrants in the following order of preference with one of the following:

- ~~B1)~~ based upon fair market value along with any additional services and overhead provided to grantee;
- ~~2) B~~ based upon the FAA cost and overhead only; or
- ~~3) A~~ a no cost outgrant that specifies the non-monetary consideration of both parties.

Q3. Waiving Rent: Under what circumstances should a RECO waive 1) collecting the fair market value for an outgrant and only charge for services provided or 2) collect no monetary consideration at all?

A3. If the grantee is providing non-monetary consideration to the FAA that is of a direct benefit to the National Airspace System and the cost of any services provided by the FAA to the grantee are minimal, then the RECO may waive collecting monetary consideration with LOB approval. The value of the non-monetary consideration should be of equivalent or greater value than the fair market value waived. The RECO should not waive the cost of the services and related overhead in the outgrant if the FAA is providing more than minimal services to the grantee.

Q34. Specify Use: Should the outgrants specify the use of the property?

A34. Yes. The outgrants ~~must need to~~ state the specific use of the property. Examples: ,e.g., agricultural use including type of crops and maximum height of crops allowed; grazing use including type and maximum

number of animals; mining rights, including what is being mined and exactly how it will be extracted; communication site, including type, maximum number of frequencies, etc.  
~~-or as a mining rights.~~

Q45. Options: Can outgrants have options?

A45. ~~No. Outgrants can be specified for a firm term not to exceed twenty years (see Q5). However, they may not have options placed inside. The rationale for the duration of an outlease must be documented in the real estate file. An outgrant of an FAA leased property will never extend beyond the period of the FAA lease. Please note the period of the FAA lease does not include unexercised options.~~

Q5Q6. Termination: Must Are outgrants be revocable by the FAA?

A5A6. ~~Yes. The FAA must be able to terminate an outgrant at any time and for any reason an outgrant may be revoked by the Government at anytime during the term of the outgrant. All outgrants will contain an FAA revocation clause. Outgrants are considered a form of temporary disposal until the property is needed by the FAA or the FAA elects to permanently dispose of the property. FAA must be able to regain control of the property at any time. A grantee looking for a more permanent use should seek other property. - In For outgrants on property that the FAA does not own (e.g. leased property), outgrants for FAA leased property, theis revocation clause in the outgrant must be structured to ensureso that it allows the FAA canto comply with all contractual termination rights of the underlying contractlessor (which are other than default) contained i (lease)n the FAA primary lease.~~

Q6Q7. Transferability: Can the licensee or permittee transfer the rights of the outgrant?

A6A7. No. Outgrants are issued exclusively to the licensee/permittee for limited time and for a specific purpose, the licensee/permittee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

Q7Q8. Emergency Service Providers: Can we waive the fee for an emergency service agency that requests an outgrant from the FAA?

A7A8. The criteria to charge rent to an emergency provider is not whether they provide emergency services but are whether the ~~other outgrantee entity~~ is ~~athe~~ state or local government or the grantee is a private entity, ~~not whether they are emergency services~~. If the emergency service ~~s~~ or 911 ~~providerarty~~ is another government entity, such as a (i.e. state, county, or city government, ), the RECO can waive the rent for use of ~~theour~~ property. However, the ~~government entity~~ should make their own improvements, be ~~liable for what it does on the property, and pay for any FAA-provided services based on asks the FAA for reimbursement for actual costs to FAA services and overhead~~ (i.e. utilities, pro rata share of road maintenance, and any other services that FAA renders for the outgranteeother party.)

If the emergency services ~~provider party~~ is a private entity, then the RECO will may need to comneed to charge fair market value for use of the property along with any FAA provided services.pete the available space and request a fair market value fee in lieu of rent to be charged that goes to the "Miscellaneous Receipts of the General Treasury", not the FAA. The FAA must not give an unfair advantage to one private entity over another.

Further, if other private property is available nearby, the emergency service provider should be encouraged to go to seek use of the private property and not the FAA property.

Q9. Liability Insurance: Is the grantee, as a condition of the outgrant, required to carry general liability insurance?

A9. It depends on whether the grantee is a Federal agency, a State or local government entity, or a private entity (all others). As a general policy, the FAA requires that any use of FAA property by a grantee is adequately covered against potential liability and/or damage caused by the use. In addition to general liability insurance, this must include coverage of costs due to potential damage to the environment (e.g. wetlands, endangered plants, etc.) or through the release of hazardous substances or petroleum products on the property. RECO's must obtain a copy of the Certificate of Insurance prior to allowing any new or continuing use (in the case of a succeeding lease) of the property and place the copy in the real estate file. Since insurance policies are generally written for only one year, the RECO is to obtain a copy of any successive insurance coverage period from the grantee during the term of the outgrant.

- Other Federal Agency: Federal agencies are self-insured and are generally prohibited from paying for insurance. In lieu of insurance, the Federal agency agrees to pay for any damage caused to the property subject to the availability of appropriations.
- State/Local government: All State and local government entities are required to provide insurance; however, if the government entity is prohibited from providing insurance due to state or local law, the RECO will need to work with the government party, the LOB, and FAA legal counsel to develop an acceptable alternative liability clause.
- Private Entity: Effective October 1, 2014, all private entities must obtain and maintain a general liability insurance policy as a condition of use of FAA property. All outgrant licenses with private entities shall contain the standard general liability insurance clause found in the Outgrant License Form for non-Federal entity.

## Section Revised 1.2 Land Clause Matrix

### 1.2 Land Clause Matrix Revised 4/2014

#### Legend:

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – The RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

CLAUSE TITLE	DATE OF CLAUSE	ON AIRPORT	MEMORANDUM OF AGREEMENT (MOA)	PRESCRIPTION
Anti-Kickback	Oct-96	M	M	Insert in all leases IAW 41 U.S.C. 51-58. In the MOA incorporated by reference.
Assignment of Claims	Oct-96	N/A	N/A	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Cancellation	Aug-02	M	M	Insert in all leases and MOAs to preserve the Governments rights to terminate for our convenience. In the MOA this clause is inserted in the Terms and Condition clause.

Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property	Jan-13	M	N/A	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note: If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause
Certification of Registration in System for Award Management (SAM)	Jan-13	M	N/A	Required on all cost contracts, unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor
Contractor Payment Information – Non-SAM	Jan-13	M*	N/A	*Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: “System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”.
Consideration (Cost)	Aug-02	M	N/A	Insert in all leases where we pay money for a lease term. This clause is required by the basic contracting principle that all leases must have clearly defined consideration. The dollar amount represents only the firm term portion of this lease.

Consideration (No Cost)	Aug-02	M	M	Insert in all leases where we do not pay money for a lease term or for MOAs. This clause is required by the basic contracting principle that all leases must have clearly defined consideration.
Contract Disputes	Nov-03	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.

					regulations regarding Protests and Disputes under the AMS.
Covenant Against Contingent Fees	Oct-96	M	<del>M</del>	M	Insert in all leases IAW 41 USC 254. For MOA incorporated by reference.
Day-to-Day Lease Extension	Aug-02	O	<del>⊖</del>	N/A	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a lease where cost is the consideration or part of the consideration, the total term of the lease, <u>including</u> the total NTE days included in this clause must not exceed the twenty year FAA leasing authority (49 USC 40110). No cost leases can be executed for the expected life of the system supported by the land lease.
Examination of Records	Aug-02	M	<del>M</del>	M	Insert in all leases.
FAA Facilities	Oct-05	N/A	<del>N/A</del>	M	This clause must be inserted in all MOAs. It references the most recent Airport Layout Plan (ALP) and defines the list of facilities placed under this agreement
Funding Responsibility For Government Facilities	Oct-96	M	<del>N/A</del>	M	This clause must be inserted in all on airport leases. It ensures that the sponsor will pay for the relocation, replacement and/or modification of Government equipment unless the change is specifically requested in

					writing by the Government
Hazardous Substance	May-00	M*	<del>N/A</del>	M	Insert in all <b>on airport</b> leases and MOAs. This

Contamination					clause requires the lessor to hold the Government harmless for environmental contamination found in the property that is not associated with Government activity. Having this clause may allow the requiring office to waive the requirement to conduct an environmental due diligence audit (EDDA) prior to the property transaction (see FAA Order 1050.19B). If the lessor does not agree to this clause, an approved EDDA (or EDDA waiver) must be obtained prior to the real estate transaction.
Interest For Late Payments	Aug-02	N/A	N/A		The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the lessor when negotiating an off airport lease. Since airports have an inherent benefit from installed FAA equipment, an added incentive is not needed for on airport leases.

Interference with Government Operations	Oct-96	M	M	Insert in all <u>on airport</u> leases and MOAs. This clause ensures that the sponsor will conform to the approved airport layout Plan (ALP). The clause does not relieve the RECO of the requirement to obtain real property rights for the technical clear zone.
Lease Succession	Aug-02	M	M	Insert in follow-on contracts to track continuity of data.
Non-Restoration	Oct-96	M	M	<p>Insert in all leases in order to make the Government's intention of not restoring the premises and abandoning the equipment. This clause is needed to clearly convey the Governments intentions and the agreement between the parties upon termination or expiration of the lease. It is the policy of the FAA not to restore.</p> <p>This clause is mandatory for a MOA; however the RECO can remain silent on this clause if the airport sponsor will agree.</p>
Notification of Change in Land Title	Aug-02	M	N/A	Insert in all leases. This clause protects the lease rights of the Government in case of change in ownership of the property.

Notices	Oct-96	M	M	Insert in all leases and MOAs. This information is needed for contract administration; all contractual communication should be done through these contacts. A change in this information requires a contract modification.
Officials Not to Benefit	Oct-96	M	M	Insert in all leases IAW 41 U.S.C. 22
Payment by Electronic Fund Transfer	Jan-13	M	N/A	Insert in all "cost" leases IAW 31 U.S.C. 333.
Premises	Aug-02	M	N/A	Insert in all leases. This clause is required by the basic contracting principle that all leases must clearly define the leased premises. This should include a description of the leased air rights.
Purpose	Oct-05	N/A	M	Insert in all MOAs to define the FAA air traffic activities with airport sponsor.
Protest	Nov-03	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Quiet Enjoyment	Oct-96	M	N/A	Insert in all leases. This clause is required by the basic contracting principle to protect the FAA's full rights to the property.

Renewal Options	Jul-07	M	N/A	<p>Insert in all leases that have Options in order to comply with basic contracting principle that all options must be clearly defined. RECO can modify the clause to reflect the correct number of lease options.</p> <p>NOTE: This clause requires the RECO to provide the lessor 60 days notice of the Government's intent to exercise the option or its intent to vacate the premises at the end of the current lease term. It also requires the RECO to send the lessor written documentation of the option exercise; it is our policy that a contract modification would be issued to document that the option has been exercised.</p>
Restoration Clause – Alternate A	Jan-07	O	O	<p>This is an alternate restoration clause to be used for On-Airport Leases and MOAs. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.</p>

Restoration Clause – Alternate B	Jan-07	N/A	N/A	This is an alternate restoration clause to be used for Off-Airport leases. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Signature Block	Aug-02	M	M	Insert in all leases and MOAs in order to comply with the basic contracting principle that all leases must be signed by authorized parties to the agreement. This clause must be modified to comply with recording requirements of the local jurisdiction, i.e. the local recording office may require the signature to be notarized.
Subordination, Nondisturbance and Attornment	Jan-14	M	N/A	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
System for Award Management - Real Property	Jan-13	M	N/A	Insert in all cost leases, unless the RECO grants an exception to use of SAM per provisions of Guidance Section "3.1.4.1 : System for Award Management SAM)".

Term	Aug-02	M	<del>M</del>	M	<p>Insert in all leases in order to comply with the basic contracting principle that all leases must have a clearly defined term.</p> <p>1. <u>This clause is used in all</u> firm term leases that will be incrementally funded; this is the preferred type of lease.</p> <p>2. This clause is also used in leases that are structured with options. In this case, the term set out in this clause is <u>only</u> the firm term part of the lease. NOTE: Leases, where cost is part of the consideration, may not exceed 20 years (including all option periods and the Day-to- Day Lease Extension period). However, "no cost leases" can be executed for the expected life of the system supported by the land lease. Delete last sentence for On-Airport is a no cost lease.</p> <p>Insert in all MOAs, this clause is labeled "Term and Conditions". The term of MOA is to be for the greatest number of years (life expectancy) of a FAA facility.</p>
Title to Improvements	Oct-05	N/A	<del>N/A</del>	M	Insert in all MOAs to define title to improvements
FORMS List of Facilities	Oct-05	N/A	<del>N/A</del>	M	Any modifications or additions to this list must be signed by the lessor and the FAA.

## Section Revised: 2.4.8 Appendix H: Seismic

### 2.4.8 Appendix H: Seismic Revised 10/2014

Buildings, or space, acquired for the FAA or constructed on FAA property must meet current seismic safety requirements as provided in E.O. 12699, E.O. 12941 & P.L. 101-614.

~~In 1996, NIST RP-4 Standards for Seismic Safety for Existing Federally Owned or Leased Buildings, February 1994, instituted a requirement that all Federal agencies leasing space and buildings were to follow Interagency Committee for Seismic Safety in Construction (ICSSC) standards similar to those required for existing owned buildings. RP-4 was superseded by RP-6 in 2002, and it in turn was superseded by RP-8 December 2011.~~

The ~~current~~ standard for seismic safety in Federally Owned or Leased Buildings is found in National Institute of Standards and Technology (NIST) RP-8, [Standards for Seismic Safety for Existing Federally Owned or Leased Buildings, December 2011](#). RP-8 requires a "Seismic Safety Certification" to be executed by a qualified structural engineer prior to signing any new lease or renewing existing leases. The requirements for

the Seismic Safety Certification are found in RP8. In addition, Section 1.3 of RP-8 lists a number of *exemptions* and one *exception* that may relieve the Agency of the Seismic Safety Certification. ~~Any~~ These exemptions or exception must be applied on a case-by-case basis ~~and in consultation with the Seismic Risk Mitigation Program Office (AJW 242) at FAA Headquarters, or other seismic safety subject matter expert as may be provided by the Government.~~

Guidance on compliance requirements for leased space or buildings is set forth below:

The FAA is required to implement a program to mitigate seismic hazards in buildings occupied by FAA. It is FAA's policy to ensure the safety of its employees. Accordingly, every effort should be made in the space acquisition process to ensure that FAA employees are housed in seismically safe buildings. In this regard, and to the extent practicable, any new leases or succeeding leases in existing locations renewals are to be for space in buildings that comply with seismic standards ~~or that are exempt from the standards in accordance with Section 1.3 of RP-8.~~

There are several levels of seismic performance. For leasing purposes, RP-8 requires that, at a minimum, all buildings and space occupied by FAA personnel must meet the "Life-Safety" performance objective. A RECO may request a higher seismic performance objective if Agency LOB requirements dictate a need for a performance objective higher than "Life Safety." The other performance objectives are "Immediate Occupancy," which requires that a building be constructed so that it could sustain a level of damage during a seismic event that is sufficiently minimal that employees could re-enter the building immediately after a post-event inspection, and "Continuous Performance", which requires that a building be constructed so that no damage would occur during a seismic event, and that, consequently, employees would not be required to leave their duty stations during or after a seismic event.

### Leased Facilities

A licensed structural engineer hired by the Lessor must certify on the Life Safety Compliance/Seismic Certification of Seismic Compliance (Form 2.6.4) ~~that the construction meets the established acceptable standard, or applicable exemption or exception from the standard, or in the case of buildings that don't meet the minimum standard, assesses~~ the level of seismic compliance. The structural engineer's certification is to be kept in with the lease contract file ~~for the life of the contract and included in the closeout file~~. An alternate document such as a letter from the Lessor stating the building meets the seismic compliance does not take the place of the required certification form.

Life Safety Compliance/Seismic Certifications do not expire. If the building owner provided a signed certification for the building under a previous lease, it is still valid. The RECO is to ensure the original signed certification is placed in any succeeding lease file and a copy kept in the previous lease file.

The RP-8 Standards shall apply to all or portions of a building leased by the FAA, unless an exemption or exception exempt applies under the provisions of RP-8.

Section 1.3 of RP-8 ~~does~~ provides several exemptions and one exceptions to the standard. Below ~~Following~~ are examples of these exemptions and exception, s which cite the applicable RP-8 section. ~~of RP-8 the example is taken from:~~

### 1.3—Exemptioneptions (RP-8 Section 1.3)

The following are common exemptions from the RP-8 standard:

- ~~• The remaining useful life of the building or the agency's requirement for the building has been identified as being less than five years.~~
- ~~• Any buildings in some areas designated as low seismic risk\*~~
- ~~• Temporary short term leases~~
- ~~• Total federal leased area in a non-federally owned building is less than 10,000 square feet, and meets certain shaking intensity criteria\*~~
- ~~• One story buildings of steel light frame or wood construction under 3,000 sq. ft.\*~~
- ~~• Building structures intended only for incidental human occupancy of less than 2 hours per day\*~~
- ~~• Additional exemptions are available if applicable to the space being considered for lease, but see caveat below\*~~

~~\* Must consult with engineering services or equivalent seismic subject matter experts for assistance when considering application of an exemption, since most come with technical caveats and criteria contained in RP-8.~~

- ~~• The building is in a low seismic risk zone (SDS<0.33g and SD1<0.133g) as shown in the green areas on the map from the U.S. Geological Survey dated May 2012. (Attachment to Form 2.6.4.1)~~
- ~~• The total area in the building leased by the Federal Government is less than 10,000 sq. ft. and is located in the yellow area as shown on the map from the U.S. Geological Survey dated May 2012. (Attachment for Form 2.6.4.)~~
- ~~• The remaining useful life of the building or the agency's requirement for the building is less than five years (short term lease).~~
- ~~• The building is one story, constructed of a light steel frame or wood, and is under less than 3,000 sq. ft.~~
- ~~• FAA's use of the building is intended only for incidental human occupancy of less than 2 hours per day.~~

~~If a building selected for lease award meets one of the exemptions above, the RECO is to fill out and sign Exemption/Exception from Seismic Compliance (Form 2.6.4.1) and place it in the lease file.~~

**1.3.1—Benchmark Buildings (RP-8 Section 1.3.1):** Some buildings may qualify as benchmark buildings, designed or retrofitted with seismic provisions deemed suitable at the time of construction or renovation, and thus could be deemed to meet minimum seismic requirements. The application of the RP-8 standard for benchmark buildings is very complex and requires technical expertise to interpret. The RECO-Lessor must provide a Life Safety Compliance/Seismic Certification (Form 2.6.4), signed by a Structural Engineer, if must consult with appropriate FAA seismic experts from engineering services or equivalent seismic subject matter experts, if an Offeror / Lessor submits a seismic certification claiming benchmark building status.

**1.3.2—Best Available Leased Buildings Exception (RP-8 Section 1.3.2):** If no seismically conforming space is available, otherwise acceptable space with the best seismic resistance shall be pursued.

The distinction between an exemption and an exception is that an exemption allows a presumption to be made that the building is life safe based on research by the Government and industry. Use of the best available space The exception does not allow a presumption of life safety. It indicates acceptance of the reality that the Agency cannot perform its mission without occupying that particular space.

The LOB manager may choose to modify the space requirements or expand the delineated area to allow for more space options that could meet the minimum requirement, or modify the space requirements (such as term of the lease) to allow for more space options that could meet the minimum seismic requirements provided via new construction, or the LOB may choose to expend Agency funds to have the ~~FAA occupied~~ space evaluated by a Licensed Structural Engineer for life safety according to the requirements of RP-8.

The term of any lease under this ~~exception~~ should be limited to that time necessary for the tenant LOB to budget for and fund relocation to compliant space.

~~This~~ decision to use the best available space exception should ~~must~~ be made in writing and concurrence obtained by the Line of Business (LOB) that occupies or will occupy the space. RECO is to use Exemption/Exception to Seismic Compliance (Form 2.6.4.1) to document the lease file. Therefore the RECO must coordinate with the appropriate LOB manager and the Seismic Safety Risk Mitigation Program office (AJW 242), or other such seismic subject matter experts the FAA may provide, when the 'best available space' exception is utilized. The RECO must document the lease file regarding the LOBs decision and the justification provided. The LOB manager may choose to expand the delineated area to allow for more space options that could meet the minimum requirement, or modify the space requirements (such as term of the lease) to allow for space provided via new construction, or the LOB may choose to expend Agency funds to have the FAA occupied space evaluated for life safety according to the requirements of RP 8. The term of any lease under this exemption should be limited to that time necessary for the tenant LOB to budget for and fund relocation to compliant space.

**1.3.3—Privately Owned Buildings on Federal Land (RP-8 Section 1.3.3):** The Standards shall be applied to all privately owned buildings located on Federal land. Application of the Standards to evaluate ~~and~~ and rehabilitate ~~ion~~ buildings for ~~of~~ seismic risks shall be the responsibility of the building owner. The RECO must include the seismic lease clauses in any outgrant agreement or other agreement that allows the privately owned building to be located on FAA property to ensure the structure ~~is in compliance~~ complies with the Standard.

### Lease Clauses

Unless one of the exemptions or the best available exception applies to the space, the RECO is to insert tThe seismic safety clauses, 7AA “SEISMIC SAFETY FOR EXISTING BUILDINGS, and 7AB, SEISMIC SAFETY FOR NEW CONSTRUCTION into ~~apply to~~ all new and renewals succeeding space leases, as well as to the construction of new buildings to be leased by the FAA, and to any outgrant license, permit, or other such agreement that may allow for the placement of a privately owned building on FAA or other federal property

The seismic safety clause(s) are not be inserted in the lease if one of the exemptions or the best available exception applies to the space.

## **2.4.16 Environmental / Sustainability / Energy** Revised 4/2014

### A. Guidance

FAA is required to significantly reduce the negative environmental effects of constructing, leasing, operating and maintaining and demolishing buildings. Some of the potential results from successful reduction of negative environmental effects may include: 1) a reduction in total life-cycle costs of facilities through the improvement of energy efficiency and the implementation of alternative energy technologies; 2) a reduction in total adverse environmental impacts by the reduction of carbon emissions; and 3) an enhancement of the safety, health and productivity of FAA employees through the reduction in the use of toxic chemicals in buildings.

#### 1. High Performance Sustainable Buildings

Executive Order (EO) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, dated January 24, 2007, and EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance, dated October 5, 2009, require federal agencies to comply with the Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The Guiding Principles establish building standards for:

- Integrated design,
- Energy performance,
- Water conservation,
- Indoor environmental quality, and
- Building materials.

The Interagency Sustainability Working Group (ISWG), established by EO 13423, issued the current version of the Guiding Principles on December 1, 2008, which includes standards for building construction and major renovation, as well as standards for building operation and maintenance (HPSB Appendix).

The EOs direct the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned and directly leased building inventory greater than 5,000 square feet (it should be noted that Energy Independence and Security Act (EISA) requires Energy Star labeled buildings for 10,000 gross square feet or above) by 2015 and demonstrate annual progress thereafter toward 100% conformance. FAA's strategy to meet this mandate includes acquiring green leases.

New or succeeding lease space and space which FAA shall continue to occupy through a succeeding lease must meet the Guiding Principles (HPSB Appendix). A RECO can identify buildings that will meet the Guiding Principles by looking for Energy Star labeled buildings or buildings that have received Leadership in Energy and Environmental Design (LEED) certification. A RECO may pay more for sustainable lease spaces to the extent that funds are available. The space acquisition shall be considered financially feasible if the rental offer for space in a conforming building is no more than 10% greater than the market rate for a comparable conventional building in the same rental market. If the market does not support buildings that meet the Guiding Principles (e.g., the RECO is unable to obtain sufficient competition for HPSBs, the offered rental rates are excessive, etc.), then the RECO must provide written justification for the inability to meet the Guiding Principles in the Negotiator Report. Notwithstanding the foregoing, the RECO shall include within the solicitation all AMS provisions applicable to the acquisition of sustainable or "green" space.

## 2. Energy Star Buildings

As of December 19, 2010, Section 435 of the EISA mandates that, if financially feasible, all new space must be acquired in buildings having either an Energy Star label for the most recent year, or a commitment from the Lessor to earn the Energy Star label within one year of signing the lease. The acquisition shall be considered financially feasible if the proposed rental is no more than 10% over the market rate for a comparable building in the same rental market. Regardless of whether or not acquiring space in an Energy Star designated building is financially feasible, the RECO shall incorporate all AMS provisions applicable to the acquisition of sustainable or "green space", which include the provisions for Energy Star designation, into the Solicitation for Offer (SFO).

In addition to financial infeasibility, there are four other exemptions to the requirement for the Energy Star label that are allowable. They are the following:

1. No space is offered in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
2. The agency will remain in a building they currently occupy;
3. The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
4. The lease is for no more than 10,000 gross square feet of space.

The determination of whether or not a particular building meets the requirements for an exception to the requirement for an Energy Star label, shall be based upon a review of supporting documentation submitted to the RECO by the Lessor/Offeror. If the documentation submitted is determined sufficient to establish such an exception, the Lessor/Offeror shall be required to renovate the subject building with all energy efficiency and conservation improvements that would be cost effective over the life of the lease. As mentioned in the HPSB Guidance, a RECO may pay more for sustainable lease spaces to the extent that funds are available. The acquisition of space that complies shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the same rental market. As stated previously, if unable to obtain space designated as Energy Star compliant, the RECO must provide written justification for such inability in the Negotiator Report.

### B. Applicability of Sustainability Requirements to FAA Space Acquisition

The requirements of this section apply to all FAA owned and leased buildings reported in the Real Estate Management System (REMS). The FAA has updated its inventory of buildings and is working towards meeting the EO 13423 and 13514 and EISA requirements regarding High Performance Sustainable Buildings (HPSB). HPSB requirements apply to space and buildings having the following characteristics: 1) owned or leased and 2) over 5,000 square feet (Guiding Principles).

### C. Laws, Executive Orders, Regulations and Other Policies Applicable to Sustainability

Legal and other programmatic requirements for the acquisition of space in sustainable buildings include:

1. Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, 74 FR 52117, October 5, 2009
2. Executive Order 13423, Strengthening Federal Environmental, Energy, and

Transportation Management, 72 FR 2763, January 23, 2007

3. Office of Management and Budget (OMB) Circular No. A-11, June 27, 2002
4. Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding
5. Energy Policy Act (EPA) of 2005, Publ.L.No.109-58
6. Energy Independence and Security Act of 2007, Pub.L.No.110-140
7. Implementing Instructions - Sustainable Locations for Federal Facilities
8. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
9. National Environmental Policy Act (NEPA)
10. Resource Conservation and Recovery Act (RCRA)
11. FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions
12. Knowledge Services Network (KSN)
13. FedCenter and The Whole Building Design Guide (WBDG) Websites

#### Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B 1-9b(3) or an EDDA if the RECO is executing a new or succeeding lease or exercising an option to renew the space lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B , the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. ~~See additional information below: If the memorandum is not provided, the RECO can cite in the Negotiator Report that the EDDA memorandum required for the lease renewal transaction was not received from the LOB requester per FAA order 1050.19B 1-9b(3).~~

- No additional EDDA documentation is required when exercising an existing renewal option where the terms of the option were negotiated during the original leasing action.
- For new acquisitions (new locations or increasing the size of the existing location) or for disposals/terminations (in whole or in part), the RECO is not to finalize the real estate transaction until the appropriate documentation (EDDA report, memorandum and/or waiver) is approved by the LOB.
- For succeeding leases in the same location where there are no changes in the area under lease (either increasing or decreasing in size), if the appropriate documentation (EDDA report, memorandum and/or waiver) is not provided either by the LOB or upon request by the RECO, the RECO can proceed with the succeeding lease award but must document the lease file showing evidence of the attempt to secure the documentation from the LOB.

#### D. Definitions

See Appendix E to this Guidance for a full listing of terms and definitions applicable to HPSB. Set forth below are some of the most commonly used terms and definitions applicable to sustainability.

- **Energy Intensity** - energy consumption per square foot of building space, including industrial or laboratory facilities (EO 13514, Section 19(f)).
- **Environmental** - environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions (EO 13514, Section 19(g)).
- **Sustainability** - to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans (EO 13423, Section 9 and EO 13514, Section 19(l)).

## E. Operation and Maintenance

The Guiding Principles (HPSB APPENDIX) include standards for both building construction and major renovation as well as for the operation and maintenance (O&M) of buildings and space. The O&M program for leased buildings should be monitored by the Lessor throughout the lease term and O&M information provided to the RECO to ensure it conforms to the O&M requirements of the Guiding Principles.

## F. Tracking and Reporting Sustainability Compliance

Tracking and reporting on agency progress towards reaching the sustainable buildings goals is a requirement of EOs 13423 and 13514 and EISA 432. To leverage existing resources related to real property management, sustainable building inventory data is reported in the Federal Real Property Profile (FRPP) database via FRPP data element #25 "Sustainability". In order to select "Yes (1)" for data element #25, the new, existing or non-GSA leased building must meet the Guiding Principles (HPSB APPENDIX). The rate of building conformance to the Guiding Principles is reported by the Department of Transportation (DOT) to Office of Management and Budget (OMB) annually with mid-year progress updates via the Sustainability Scorecard.

### 1. Tools to use for Reporting:

The following are the systems and tools that must be used to report data on HPSB in order to meet the requirements of EOs 13514 and 13423 and EISA:

1. Real Estate Management System (REMS) - Submit the Federal Real Property Portfolio (FRPP) annually as well as additional information on buildings that meet the criteria for HPSB. Users are assigned and managed by ALO-300.
2. Energy Star Portfolio Manager - Generates a Guiding Principle checklist for reporting HPSBs for FAA. For all leased buildings, the Lessor is required to use this tool to track progress towards meeting the Guiding Principles. The Energy Star Portfolio Manager GP checklist should be provided to the RECO.

Also, the Energy Star Portfolio Manager can help FAA track and report on its progress in acquiring leased Energy Star buildings. Federal agencies assessing their existing building inventory against the Guiding Principles for HPSBs can use the Guiding Principles Checklist. Access the Guiding Principles Checklist from the [Energy Star](#) website.

**Section Revised: 2.5 Space Clause Matrix**

**2.5 Space Clause Matrix** Revised 4/2014

**Section 1 – Space Lease** – All items under this section must be included in the lease. **Section 2 –**

**General Clauses** – Use the legend below to determine clause requirement. **Legend:**

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

Note - All space leases may be augmented with additional clauses or special provisions with region/center legal approval. If any clauses are changed with applicable concurrence, RECO must take out the parenthetical date in the clause, e.g. (10/96).

**Section 3 – Closing** - All items under this section must be included in the lease.

**Attachment A and Attachment B Clauses** - Use the legend above in Section 2 to determine clause requirement.

CLAUSE TITLE	DATE OF CLAUSE	ANTENNA AND RACK SPACE LEASE	PRESCRIPTION
Acceptance of Space	8/02	N/A	<del>Insert in all new lease actions for the RECO to accept the space for occupaney, except for: all succeeding lease actions this clause is Optional.</del>

<del>Accessibility</del>	<del>10/06</del>	<del>N/A</del>	<del>Insert in all leases in accordance with Architectural Barriers Act 1968 to follow the Architectural Barriers Act Accessibility Standard (ABAAS) 41 CFR Parts 102-71, 102-72, except for: 1.) ATCT</del>
			<del>Cabs, mech. rooms, elect. &amp; telephone closets and 2.) Non-staffed facilities such as RCO.</del>
Affirmative Action for Special Disabled and Vietnam Era Veterans	10/96	O	Insert in all leases in accordance with Vietnam Era Veteran's Readjustment Assistance Act of 1972.
Affirmative Action For Disabled Workers	10/96	O	Insert in all leases in accordance with Rehabilitation Act of 1973, 29 U.S.C. 793.
Alterations	10/96	O	Insert in all leases to provide the Government the protection to make alterations to the lease space during the term of the lease.
Anti-Kickback	10/96	M by reference	Insert in all leases in accordance with the Anti-Kickback Act of 1986, 41 U.S.C. 51-58.
Assignment of Claims	10/96	M by reference	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Certification of Registration in SAM - Real Property	1/13	M by reference	Required on all cost leases, unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.

Changes	8/02	N/A	Insert in leases at the RECO's option when the government requires changes during a new lease buildout phase.
Compliance with Applicable Laws	10/96	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Contract Disputes	11/03	M	Insert in all leases as required by FAA policy on contract and protest dispute resolution system from the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17.
Protest	11/03	M	
Contractor Identification Number -"Data Universal Numbering System" (DUNS) Number	1/13	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause from contract.

Contractor Payment Information - Non SAM	1/13	O	Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: “System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”.
Coordination	10/08	M	Mandatory for leases involving antenna and rack space
Covenant Against Contingent Fees	10/96	M by reference	Insert in all leases in accordance with 41 USC 254.
Damage By Fire or Other Casualty	10/96	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Davis Bacon Act	6/09	O	In accordance with 40 U.S.C. 276a et seq.), use for leases over \$2,000
			<del>for construction, alteration or repair of public buildings or public works to be performed within the United States.</del>
Default By Lessor	10/96	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.

<del>Delivery and Condition</del>	<del>10/96</del>	<del>N/A</del>	<del>Insert in all leases to provide the protection to the Government to ensure the space is delivered in a condition to be occupied.</del>
Equal Opportunity	10/96	O	Insert in all leases in accordance with affirmative action programs, 41 CFR 60-1 and 60-2.
Examination of Records	8/02	M by reference	Insert in all leases.
Failure In Performance	10/96	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Inspection	10/96	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Integrated Agreement	10/96	O	Insert in all leases to assert the lease agreement defines the agreements between the parties.
Interference	10/08	M	Mandatory for leases involving antenna and rack space.
Lessor's Successors	10/96	M by reference	This clause must be used to protect the lease rights of the Government in case of change in ownership of the property.
Maintenance Of The Premises	10/96	M	Insert in all leases to comply with basic protection of ensuring that the lease space is in good condition.

No Waiver	10/96	M by reference	Insert in all leases to protect the Government from waiving any rights under this lease.
Officials Not To Benefit	10/96	M by reference	Insert in all leases in accordance with public contract law, 41 U.S.C. 22.
Payment by Electronic Funds Transfer	1/13	M by reference	Insert in all new "cost" leases, or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - Electronic Funds Transfer" and RE Guidance "3.1.4.2 - Electronic Fund Transfer (EFT)". Note: Clause is to be used in all cases, but lessor may qualify for a waiver (See instructions in T3.3.1.A-3). The clause allows for documentation of waiver, and providing alternate mean to receive payment, but clause is to be retained in document, as waivers are NOT permanent. Clause is not applicable to no-cost leases or no-cost MOAs.
<del>Seismic Safety In</del>	<del>10/12</del>	<del>N/A</del>	<del>*Mandatory for space</del>

<del>Existing Buildings</del>			<del>leases 10,000 SF or greater in existing buildings. Not required for Leases less than 10,000 SF, if in an area of low seismicity per the criteria set RP-8, Section 1.3, or the FAA determines that the acquisition meets one of the additional exceptions:</del>  <del>Small lease housed in single-story structure of wood or metal frame less than 3,000 SF.</del>  <del>Agency requirement is less than 5 Years.</del>  <del>If Lessor or FAA proposes an exemption or the “best available space” exception to the certification requirement RECO must document file with determination after consulting seismic safety personnel.</del>
<del>Seismic Safety For New Construction</del>	<del>10/12</del>	<del>N/A</del>	<del>Mandatory for leases involving new construction or major renovation (Project cost exceeds 50% of building replacement value)</del>
Subordination, Nondisturbance and Attornment	1/14	M by reference	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
<del>Sublease</del>	<del>10/96</del>	<del>N/A</del>	<del>Insert in leases where the RECO expects to sublease the FAA space to another tenant.</del>

			<del>However this clause does not relieve FAA with responsibilities of the terms of the lease.</del>
System for Award Management - Real Property	1/03	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - - System for Award Management (SAM)" and RE Guidance "3.1.4.2 - System for Award Management (SAM)". SAM is the preferred method of contractor maintenance for FAA. CO may exempt some vendors IAW guidance provided in T3.3.1.8 & RE Guidance 3.1.4.2. If vendor is exempted from use of SAM, use clause "Contractor Payment Information - Non SAM - Real Property".

**SECTION 3 – CLOSING**

Notices

Attachments

Name and Title of Owner

Name of Contracting Officer

**Attachment A Clauses**

<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
Adhesives and Sealants	1/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.

Adjustment For Vacant Premises	10/96	O	Insert in all leases to provide the Government with protection if use of space changes during <u>lease term.</u>
			<del>lease term.</del>
Ceilings	10/96	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Condition Report	4/12	O	Insert in leases where accepting space for occupancy.
Contracting Officer's Representative	10/96	O	Insert in leases where a COR is designated.
Day to Day Extension	8/02	O	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a cost lease, the total term of the lease, including the total day to day extension days, must not exceed the twenty year FAA leasing authority.
Display Advertising	10/96	O	Insert in leases where Government is sole occupant.
Doors	4/12	O	Insert in leases for door requirement.
Electrical Safety	4/12	M	Insert in all leases. Any changes should be approved by service area environmental contact.
EOSH	4/12	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Erection Of Signs	10/96	O	Insert in leases where signs are required.
Facility Security	4/12	O	Insert in all leases in accordance with FAA Order 1600.69.

Fall Protection	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Fire and Safety Requirements	4/12	O	Insert in all leases to provide protection to the Government.
Floor Load	8/02	O	Insert in all leases. Regional engineer should approve any changes.
<del>General Health and Safety Standards</del>	<del>4/12</del>	<del>N/A</del>	<del>Insert in all leases to meet the following standards: local health, safety, building codes and FAA standards.</del>
Grounds Maintenance	10/96	O	Insert in all leases where applicable.
Halon	4/12	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Hazardous Materials	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Hold Harmless	10/96	R	Insert in leases in accordance with Federal Tort Claims Act of 1948.
HVAC	4/12	O	Insert in all leases. RECO's should consult a service area engineer for changes to clause.
If Minimum Not Delivered	10/96	O	Insert in leases.
Indoor Air Quality	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Installation Of Antennas, Cables & Other Appurtenances	4/12	O	Insert in all leases as needed.

Interest For Late Payment	4/12	O	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the Lessor <u>when negotiating a lease.</u>
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<u>Janitorial Services</u>	<u>4/12</u>	<u>O</u>	<u>Insert in leases, which provide for janitorial services.</u>
<u>Landscaping</u>	<u>1/12</u>	<u>O</u>	<u>Insert in all new leases where conditions permit landscaping and upgrade landscaping during lease renewal. Any changes should be approved by service area environmental contact.</u>
<u>Lighting</u>	<u>4/12</u>	<u>O</u>	<u>Insert in all leases. Any changes should be approved by service area environmental contact.</u>
<u>Measurement For Payment</u>	<u>10/96</u>	<u>O</u>	<u>Insert in leases to determine the correct amount of space to pay rent on.</u>
<u>Non-Restoration</u>	<u>10/96</u>	<u>O</u>	<u>Insert in all leases unless specific restorations</u>

			<u>are negotiated.</u>
<u>Occupancy Permit</u>	<u>8/02</u>	<u>O</u>	<u>*This clause is mandatory for new leases as required by local law to have an occupancy permit to occupy space.</u>
<u>Operating Costs Escalator</u>	<u>10/96</u>	<u>O</u>	<u>Insert in lease where applicable.</u>
<u>OSHA Requirements</u>	<u>10/96</u>	<u>O</u>	<u>Insert in all leases in accordance with OSHA standards 29 CFR 1910 and 1926.</u>
<u>Painting</u>	<u>4/12</u>	<u>O</u>	<u>Insert in all new leases. RECO should insert in all leases with lease terms of five years or longer.</u>
<u>Parking</u>	<u>4/12</u>	<u>O</u>	<u>Insert in leases where applicable.</u>

<u>Janitorial Services</u>	<u>4/12</u>	<u>O</u>	<u>Insert in leases, which provide for janitorial services.</u>
<u>Landscaping</u>	<u>1/12</u>	<u>O</u>	<u>Insert in all new leases where conditions permit landscaping and upgrade landscaping during lease renewal. Any</u>

			<u>changes should be approved by service area environmental contact.</u>
<u>Lighting</u>	<u>4/12</u>	<u>O</u>	<u>Insert in all leases. Any changes should be approved by service area environmental contact.</u>
<u>Measurement For Payment</u>	<u>10/96</u>	<u>O</u>	<u>Insert in leases to determine the correct amount of space to pay rent on.</u>
<u>Non-Restoration</u>	<u>10/96</u>	<u>O</u>	<u>Insert in all leases unless specific restorations are negotiated.</u>
<u>Occupancy Permit</u>	<u>8/02</u>	<u>O</u>	<u>*This clause is mandatory for new leases as required by local law to have an occupancy permit to occupy space.</u>
<u>Operating Costs Escalator</u>	<u>10/96</u>	<u>O</u>	<u>Insert in lease where applicable.</u>
<u>OSHA Requirements</u>	<u>10/96</u>	<u>O</u>	<u>Insert in all leases in accordance with OSHA standards 29 CFR 1910 and 1926.</u>
<u>Painting</u>	<u>4/12</u>	<u>O</u>	<u>Insert in all new leases. RECO should insert in all</u>

			<u>leases with lease terms of five years or longer.</u>
<u>Parking</u>	<u>4/12</u>	<u>O</u>	<u>Insert in leases where applicable.</u>
<u>Janitorial Services</u>	<u>4/12</u>	<u>O</u>	<u>Insert in leases, which provide for janitorial services.</u>
<u>Landscaping</u>	<u>1/12</u>	<u>O</u>	<u>Insert in all new leases where conditions permit landscaping and upgrade landscaping during lease renewal. Any changes should be approved by service area environmental contact.</u>
<u>Lighting</u>	<u>4/12</u>	<u>O</u>	<u>Insert in all leases. Any changes should be approved by service area environmental contact.</u>
<u>Measurement For Payment</u>	<u>10/96</u>	<u>O</u>	<u>Insert in leases to determine the correct amount of space to pay rent on.</u>
<u>Non-Restoration</u>	<u>10/96</u>	<u>O</u>	<u>Insert in all leases unless specific restorations are negotiated.</u>
<u>Occupancy</u>	<u>8/02</u>	<u>O</u>	<u>*This clause is</u>

<u>Permit</u>			<u>mandatory for new leases as required by local law to have an occupancy permit to occupy space.</u>
<u>Operating Costs Escalator</u>	<u>10/96</u>	<u>O</u>	<u>Insert in lease where applicable.</u>
<u>OSHA Requirements</u>	<u>10/96</u>	<u>O</u>	<u>Insert in all leases in accordance with OSHA standards 29 CFR 1910 and 1926.</u>
<u>Painting</u>	<u>4/12</u>	<u>O</u>	<u>Insert in all new leases. RECO should insert in all leases with lease terms of five years or longer.</u>
<u>Parking</u>	<u>4/12</u>	<u>O</u>	<u>Insert in leases where applicable.</u>

<del>Persons or Individuals Employed or Hired by Lessor/Contractor</del>			<del>Order 1600.72 and 1600.73</del>
Pest Control	4/12	O	Insert in all leases.
Plans	8/02	O	Insert in all new lease actions and any alterations/renovations.
<del>Prior Notification</del>	<del>8/02</del>	<del>N/A</del>	<del>Insert in all leases where construction will be done.</del>
Progressive Occupancy	10/96	O	Insert in all leases where applicable.
Radon	10/96	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycled Content Products (Comprehensive Procurement Guidelines)	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycling	1/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Refrigerants	8/02	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Restrooms and Drinking Fountains	4/12	O	Insert in all leases.
Seismic Safety for Equipment	4/12	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Services and Facilities	4/12	O	Insert in all leases.
Tax Adjustment	4/12	O	Insert in all leases where applicable.
Time Extension	10/96	O	Insert in leases.
Unauthorized Negotiating	10/96	O	Insert in all leases.
Utilities Not Provided By The Lessor	4/12	O	Insert in all leases.
Warranty Of Space	4/12	O	Insert in all leases.

Window and Floor Covering	4/12	O	Insert in all leases.
Wiring For Telephones	10/96	O	Insert in leases.

**Attachment B Clauses**

<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
Air Balance Report	10/12	O	Insert in leases where applicable.
Amortization Schedule	10/12	O	Insert in leases where applicable.
As-Built Floor Plans After Occupancy	10/12	O	Insert in leases where applicable.
Construction Schedule	10/12	O	Insert in leases where applicable.
Construction Schedule and Acceptance of Tenant Improvements	10/12	O	Insert in leases where applicable.
Construction of Tenant Improvements	10/12	O	Insert in leases where applicable.
Construction Waste Management	10/12	O	Insert in leases where applicable.
Construction Inspections	10/12	O	Insert in leases where applicable.
Design Intent Drawings	10/12	O	Insert in leases where applicable.
High Performance Sustainable Building (HPSB) Requirements	10/12	O	Insert in leases where applicable.
Lease Commencement	7/10	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Allowance in the Event of Cancellation	10/12	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Costs In Excess of The Allowance	10/12	O	Insert in leases where applicable.
Liquidated Damages	7/10	O	Insert in leases where applicable.

Measurement of Space	7/10	O	Insert in leases where applicable.
Occupancy Permit	10/12	O	Insert in leases where applicable.
Other Requirements	7/10	O	Insert in leases where applicable.
Progress Reports	7/10	O	Insert in leases where applicable.
Rent Commencement	7/10	O	Insert in leases where applicable.
Required Information Post Award: Green Label Certification for Sustainability Verification	10/12	O	Insert in leases where applicable.
Responsibility of the Lessor and Lessor's Architect/Engineer	10/12	O	Insert in leases where applicable.
Review of Working/Construction Documents	10/12	O	Insert in leases where applicable.
Tenant Improvements	10/12	O	Insert in leases where applicable.
Tenant Improvements Price Proposal Based on Construction Drawings	10/12	O	Insert in leases where applicable.
Walk-Through and Acceptance of Space	10/12	O	Insert in leases where applicable.
Work Performance	7/10	O	Insert in leases where applicable.
Working/Construction Drawings	7/10	O	Insert in leases where applicable.

**FORMS**

<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>ANTENNA AND RACK SPACE LEASE</b>	<b>PRESCRIPTION</b>
<del>ABAAS Compliance Report</del>	<del>10/12</del>	<del>N/A</del>	<del>Required for lessor to fill out to comply with ABAAS standard</del>
<del>Certification for Seismic Safety</del>	<del>10/12</del>	<del>N/A</del>	<del>Certification required in accordance with space-lease paragraphs 8X. Seismic Safety in</del>

			<del>Existing Leases and 8Y. Seismic Safety for New Construction. This attachment becomes part</del>
<del>Checklist for Rural Development Act</del>	<del>4/10</del>	<del>N/A</del>	<del>Check appropriate reason for not considering location in rural area. However if</del>
<del>Space Safety and Environmental Checklist</del>	<del>4/12</del>	<del>N/A</del>	<del>Checklist recommended in accordance with space lease paragraph 6b Standards and</del>
Vendor/Miscellaneous Payment Information Form	7/10	M	EFT Form is required in accordance with space lease paragraph 8P. Electronic Funds